

SENATE BILL REPORT

SB 6093

As Reported by Senate Committee On:
Transportation, February 6, 2012

Title: An act relating to pairing required investments in compensatory environmental mitigation, including the mitigation of transportation projects, with existing programs currently referenced in Title 76 RCW that enhance natural environmental functions.

Brief Description: Regarding wetlands mitigation.

Sponsors: Senators Haugen, King, Sheldon, Eide, Swecker, Hatfield and Morton.

Brief History:

Committee Activity: Transportation: 1/25/12, 2/06/12 [DPS].

SENATE COMMITTEE ON TRANSPORTATION

Majority Report: That Substitute Senate Bill No. 6093 be substituted therefor, and the substitute bill do pass.

Signed by Senators Haugen, Chair; Eide, Vice Chair; King, Ranking Minority Member; Fain, Assistant Ranking Minority Member; Delvin, Erickson, Hill, Hobbs, Litzow, Prentice, Ranker, Rolfes, Sheldon, Shin and Swecker.

Staff: Clint McCarthy (786-7319)

Background: Both the state and federal governments require a proponent of a project that will diminish the function of an existing wetland to mitigate that loss of function. This duty is called compensatory wetland mitigation. The project proponent has a number of options available for mitigating wetland loss; however, any mitigation plan must be approved by the state, primarily through the Department of Ecology (DOE), and the United States Army Corps of Engineers.

Summary of Bill (Recommended Substitute): Creates a new option for wetland mitigation that pairs mitigation investments with existing state programs that enhance or preserve riparian and aquatic resources. The existing state programs include the Family Forest Passage Program, the Forestry Riparian Easement Program, and the Riparian & Open Space Program. When an entity considers using these programs for wetland mitigation, they must consult with various state agencies and non-state government stakeholders. DOE and Department of Fish and Wildlife are authorized to seek federal or private funds and in-kind

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contributions to implement this wetland mitigation option. The Department of Ecology and the Department of Natural Resources (DNR) are directed to provide a report to the Legislature by December 31, 2012 on the successes and constraints of using this option for wetland mitigation.

EFFECT OF CHANGES MADE BY TRANSPORTATION COMMITTEE (Recommended Substitute): The substitute bill does not create a new account and does not give the Forest Practices Board the authority to spend funds. The use of forest landowner mitigation programs as environmental mitigation is optional. Agencies that choose to use forestry land owner mitigation programs must consult with the Department of Commerce, Department of Transportation, and DNR. DOE and DNR must provide a report to the Legislature on the use of these programs as environmental mitigation techniques by December 31, 2012.

Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony on Original Bill: PRO: WSDOT is interested in having more options for wetland mitigation and innovative approaches to wetland mitigation. Concerned as to whether or not the options available in the bill will satisfy the regulators as a means of mitigation. Washington Forest Protection Association thinks this bill will provide an additional mitigation tool and is a good use of mitigation dollars.

CON: Umatilla and Tulalip tribes object to how the Forest Practices Board is to only seek input from only state agencies, not tribes. Mitigating impacts in different places doesn't account for the impacts in the first place. The Nature Conservancy is encouraged by the bill, but they want to make sure that it will work. Too many obstacles are in the bill and need to satisfy agency needs.

OTHER: DOE supports the development of the approach and the affected forestry programs, wants to work with the writers of the bill. DNR wants to find more fund sources for land owners. Concerned that the Forest Practices Board shouldn't have authority over expenditures from the account. Department of Fish and Wildlife is supportive of providing more funding options, but have concerns with providing mitigation dollars for projects.

Persons Testifying: PRO: Doug Hooks, WA Forest Protection Assn.; Paul Wagner, WSDOT.

CON: Steve Robinson, Tulalip & Umatilla Tribes.

OTHER: Darin Cramer, DNR; Lauren Driscoll, DOE; David Whipple, WA Dept. of Fish and Wildlife; Bill Robinson, The Nature Conservancy; Yoshe Revelle; Miguel Perez-Gibson, WEC Colville Tribes.